

JAN 18 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NICANOR HERNANDEZ ESPARZA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71775

Agency No. A96-052-942

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN, and SILVERMAN, Circuit Judges.

Nicanor Hernandez Esparza, a native and citizen of Mexico, petitions pro se for review of an order of the Board of Immigration Appeals affirming without opinion the results of the immigration judge's order of removal and denial of his

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

application for cancellation of removal. The immigration judge denied the application because he lacks the requisite qualifying relative under 8 U.S.C. § 1229b(b)(1).

Esparza contends that it violates equal protection to require aliens from Mexico to prove hardship to a qualifying relative when applicants from other countries are, under the Nicaraguan and Central American Relief Act (“NACARA”), exempt from this requirement. This contention lacks merit. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 602-603 (9th Cir. 2002) (rejecting equal protection challenge to NACARA’s favorable treatment of aliens from some countries over those from other countries including Mexico); *Ram v. INS*, 243 F.3d 510, 517 (9th Cir. 2001) (holding that NACARA’s favoring aliens from specific war-torn countries must be upheld because it stems from rational diplomatic decision to encourage such aliens to remain in the United States).

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

PETITION FOR REVIEW DENIED.